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## United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

February 21, 2019

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

Dear Commissioner Rettig:

I write to call your attention to the attached letter from the Iowa State University Center for Agricultural Law and Taxation, and the Center's request for penalty relief with respect to the March 1 deadline for farmers and fishermen who chose to forgo making quarterly estimated tax payments in 2018. The Center outlines a number of the challenges that farmers are facing with this first filing season under the new tax law (Pub. L. No. 115-97, commonly known as the Tax Cuts and Jobs Act) and the subsequent revisions enacted in the Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141) with respect to agricultural cooperatives and their patrons. In talking with return preparers who are currently working on these issues with farmers, I understand this is indeed a serious matter that warrants additional time to complete the necessary returns.

Additionally, I would note that the recent partial government shutdown affected the ability of certain agricultural producers to apply for the Market Facilitation Program, which the U.S. Department of Agriculture (USDA) established last year to help producers affected by unjustified trade retaliation. While the USDA extended the application deadline to February 14, 2019, the delay may add to the burden of certain farmers in meeting the March 1 deadline for paying their 2018 tax liabilities.

Congress gave the IRS the authority to waive penalties involving estimated tax payments for "unusual circumstances [when] the imposition of such addition to tax would be against equity and good conscience." This is one such set of unusual circumstances, and I ask that you consider providing penalty relief for farmers who file their returns and pay their tax liabilities by April 15. Such relief would be consistent with Notice 2013-5, which the IRS issued the last time this special filing deadline was called into question in 2013.

Letter to Commissioner Rettig  
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Thank you for your attention to this important matter. Should you have any questions, please contact John Schoenecker or Chris Conlin of my Committee staff at 202-224-4515.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley  
Chairman  
Committee on Finance

Attachment

# IOWA STATE UNIVERSITY

## Center for Agricultural Law and Taxation

College of Agriculture and Life Sciences  
211 Curtiss, 513 Farmhouse Rd.  
Ames, Iowa 50011  
515 294-6365  
FAX: 515 294-0700  
www.calt.iastate.edu

February 19, 2019

Re: Significant Difficulties with Farm Returns – Penalty Relief for Failure to Meet March 1 Deadline

Dear Senator Grassley:

As a member of the National Farm Income Tax Extension Committee,<sup>i</sup> I am writing regarding the March 1 tax return filing deadline for farmers who qualify to use the special estimated tax rule. This rule requires them to file income tax returns and pay their taxes by March 1 if they want to avoid an underpayment of estimated tax penalty. In light of significant changes to the tax laws impacting many farm returns and the lack of IRS guidance implementing these changes, this deadline is presenting extraordinary difficulties for tax return preparers and their clients, including many family farmers. We are requesting penalty relief for farmers unable to meet this imminent deadline.

In the Tax Cuts and Jobs Act, 2017, P.L. 115-97, and the Consolidated Appropriations Act, 2018, P.L. 115-141, Congress provided special rules for applying the new section 199A deduction in the case of specified agricultural and horticultural cooperatives and their patrons.

- The new law requires a specific section 199A deduction reduction calculation for farmers receiving income from patronage business conducted with cooperatives during the cooperatives' tax years beginning after 2017.
- The law includes a "transition rule," stating that farmers may take a section 199 (old DPAD) deduction passed through to them in 2018 from a cooperative with a tax year that began in 2017. Such farmers, however, are not eligible to take the new section 199A deduction for qualified payments flowing from 2018 patronage business with cooperatives during their 2017-2018 fiscal tax years. As a result, many farmers are left with no section 199A or section 199 deduction for these payments.
- This law appears to require farmers to determine the tax year of cooperatives with which they did business in 2018, and then allocate income and expenses based upon at least three categories: (1) 2018 sales made to cooperatives during the cooperatives' tax years beginning in 2017, (2) 2018 sales made to cooperatives during the cooperatives' tax years beginning in 2018, and (3) other 2018 farm activities, including sales made to non-cooperatives and gains received from the sale of farm assets. Each category of 2018 farm income appears subject to different treatment under section 199A.<sup>ii</sup>

We use the word "appears" because as of February 19, 2019, The Treasury and IRS have issued no guidance regarding these cooperative provisions. When section 199A proposed regulations were issued in August of 2018, the "Explanation of Provisions" section stated that Treasury and IRS "continue to study this area and intend to issue separate proposed regulations describing rules for applying section 199A to specified agricultural and horticultural cooperatives and their patrons later this year." That proposed guidance never came. When final section 199A regulations were issued in January of 2019, no cooperative guidance was



forthcoming. Rather, the “Background” section states that Treasury and IRS “intend to issue a future notice of proposed rulemaking describing proposed rules” for these cooperatives provisions.

Determining how to navigate the intersection of section 199, section 199A(g), and the burdensome transition rule would be a complex task if preparers were following IRS guidance and using tax return preparation software assisting with these calculations. Because there is no guidance, however, tax return preparation software companies have not created any automated tools. Diligent preparers are left on their own to make independent calculations based upon their best interpretations of the new law. Different return preparers are using different allocation methods, many with significantly different results. Tax preparation software is not allowing preparers to report 199 (old DPAD) passed through by a cooperative to a patron as directed in Form 8903 Instructions and Publication 535. Following IRS publication directions results in a “critical error” preventing e-filing. Preparers are left to create workarounds that may distort income for other purposes, such as the premium tax credit. Ironically, preparers who have not studied the new law will likely follow calculations suggested by software, which in most cases will result in larger deductions and a better bottom line for clients. In other words, ignorance is incentivized.

We appreciate the enormous task Treasury and IRS have faced in issuing guidance, forms, and publications to implement the TCJA. The relatively small number of taxpayers impacted by these complex cooperative provisions may have justified the delay of guidance. Individual farmers, however, should not be penalized for this delay.

IRS has provided penalty relief to farmers who fail to meet the March 1 deadline in the past, most recently in 2013, when Congress passed the retroactively applied American Taxpayer Relief Act (signed January 2, 2013) and new depreciation forms were delayed. In 2012, IRS issued similar relief for farmers impacted by late 1099s arising from the MF Global bankruptcy. We believe that most tax return preparers would agree that the difficulties impacting many 2018 returns are more challenging than those farmers faced in 2012 or 2013. We appreciate your consideration of these concerns. If anyone on your staff would like to discuss these issues, please contact me at (515) 294-6365 or [ktidgren@iastate.edu](mailto:ktidgren@iastate.edu).

Sincerely,



Kristine A. Tidgren  
Director, Center for Agricultural Law & Taxation at Iowa State University  
Dolezal Adjunct Assistant Professor, Agricultural Education & Studies

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<sup>i</sup> The National Farm Income Tax Extension Committee comprises representatives from 18 public universities that provide tax law research and education for agricultural producers and the professionals who advise them. The Committee meets with IRS each year to assist with updating and reviewing Publication 225, *Farmers' Tax Guide*.

<sup>ii</sup> Additionally, on January 18, 2019, final section 199A regulations added a requirement not mentioned in the proposed regulations: taxpayers must take into account the deductible portion of the self-employment income tax under § 164(f), the self-employed health insurance deduction under § 162(l), and the deduction for contributions to qualified retirement plans under § 404 when calculating the section 199A deduction.